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Request for a subvention to the Special Court for Sierra Leone

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the advance version of the report of the Secretary-General on the request for a subvention to the Special Court for Sierra Leone (A/67/606). During its consideration of the report, the Advisory Committee met with the Registrar and other representatives of the Special Court, as well as with representatives of the Secretary-General, who provided additional information and clarification.

2. The report of the Secretary-General was prepared in response to an exchange of letters between the Secretary-General and the President of the Security Council. In his letter dated 8 November 2012 (S/2012/891), the Secretary-General informed the Security Council that despite increased efforts by him, the Management Committee, the Registrar and other senior officials of the Special Court for Sierra Leone to secure funding for the Court, there would not be sufficient voluntary contributions for the completion of its work. He also indicated that the possibility of the Court running out of funds was of particular concern since the Court was currently completing the appeal in its final case against the former President of Liberia, Charles Taylor. In his reply dated 28 November 2012 (S/2012/892), the President of the Security Council advised the Secretary-General that the Council members had taken note with certain reservations of the intention expressed in the letter and that they were requesting the Secretariat, the Management Committee of the Special Court and the Registrar and other senior officials of the Court to intensify their efforts to balance the budget and fund the activities of the Court through voluntary contributions. He further informed the Secretary-General that there was no agreement with respect to the possible need for alternate means of financing of the Residual Special Court for Sierra Leone.

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3. Upon enquiry the Advisory Committee was informed that the Secretariat, after consultation with the Office of Legal Affairs concerning the interpretation of the letter from the President of the Security Council dated 28 November 2012 (S/2012/892), had understood the words "taken note" to indicate the Council's neutral position.

II. Request for a subvention to the Special Court for Sierra Leone

4. The Advisory Committee recalls that the Special Court was created pursuant to Security Council resolution 1315 (2000) and that the Council decided that the Special Court would be funded through voluntary contributions. The Committee notes, however, despite all the fundraising efforts that have been made (see A/67/606, para. 1) the level of voluntary contributions has continued to decline. Annex I to the present report shows a list of 96 fundraising meetings held in 2012. During its consideration of the Secretary-General's report, the Committee was informed that actual contributions received in 2010 had totalled $22.7 million. The Committee notes that contributions declined to $4.82 million in 2011 (A/67/606, para. 18) and further declined to $2.96 million in 2012 (A/67/606, para. 20). The Committee was also informed that, for 2013, no pledges were expected.

5. Upon enquiry, the Advisory Committee was informed that, in coordination with the Registrar, the Management Committee had striven to ensure adequate voluntary funding and that the Court had a Liaison Officer in New York serving as focal point for all its activities. In addition to the fundraising letters and meetings with potential donors (A/67/606, para. 1), it was indicated that efforts had been made to raise awareness about the achievements of the Court and to broaden support for its operations; for instance, the Principals of the Court had recently travelled to New York with funding provided by the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women). The Committee was further informed that, in addition to engaging an international public relations firm for publicity, the Court had sought the help of, and received some support from, a number of reputable charitable organizations.

6. **Notwithstanding the efforts thus far, the Advisory Committee reiterates its call for the Court to continue its efforts to broaden its donor base. In light of the challenges encountered in attracting sustained and predictable donor support and the unpredictable length of time often required to complete judicial proceedings, the Committee notes the problems of sustaining voluntary contributions to finance judicial proceedings. The Committee therefore recommends that the lessons learned from this experience be taken into consideration for future international tribunals and courts.**

7. Upon enquiry, the Advisory Committee was informed that the delivery of the Taylor verdict (see para. 15 below) had led to the mistaken belief that the Court had completed its mandate and caused a significant drop in voluntary contributions. The Committee was further informed that the declining donor response to the Court's fundraising efforts reflected the low interest in the ongoing appellate phase of the trial.

8. In the opening summary of his report, the Secretary General indicates that the Court will experience a shortfall in contributions in the amount of $921,156 as of the end of 2012. He also indicates that the total requirements for 2013 are estimated at $13,078,844, comprising costs of operations for the period from January to September 2013 ($11,195,000), ad hoc contempt proceedings ($383,844) and tasks to be undertaken between October and December 2013 in preparation for the transition to the Residual Special Court ($1,500,000). Consequently, the Secretary-General requests a subvention of $14 million to cover the above requirements. Annex II to the present report summarizes the requirements by object of expenditure. **The Advisory Committee recommends that information on the activities to be undertaken and expected outputs during the transition period using the requirements of $1,500,000 be provided to the General Assembly during its consideration of the Secretary-General's proposal.**

III. Current financial position

9. The Advisory Committee notes that the total budget approved by the Management Committee of the Special Court for the period from January to December 2012 was $15,423,800, which was reduced by an unused allotment of $1,202,185 reflecting the transfer of some expenditures from the core budget to restricted contributions, thereby reducing the requirement to $14,221,615. The Special Court received a subvention grant in the amount of $9,066,400 for 2012 (General Assembly resolution 66/247), which, combined with pledges and contributions in the amount of $2,955,544, and the surplus of $1,278,515 brought forward from 2011, brings the total funds available for the year to $13,300,459. The subvention request for 2012 therefore amounts to $921,156, representing the difference between the total funds available ($13,300,459) and the net requirements ($14,221,615), as indicated in the table below.

Summary of subvention for 2012
(United States dollars)

Subvention received in 2012		9 066 400
Voluntary contributions and pledges		2 955 544
Surplus brought forward from 2011		1 278 515
Total funds available		**13 300 459**
Less:		
Approved budget for January-December 2012	15 423 800	
Unused allotment	(1 202 185)	
Net requirements		14 221 615
Shortfall (total income less requirements)		**(921 156)**

10. Upon enquiry, the Advisory Committee was informed that, as at 30 November 2012, the Court had available cash of $2,520,976, which, compared with the Court's outstanding obligations of $1,360,005 and restricted contributions of $1,695,064, reflects a cash deficit of $534,093 in its core funding. The Committee was also informed that, because of cash constraints, the Court had delayed payments in the

amount of $340,000 to its vendors. **The Advisory Committee notes with concern the adverse cash position of the Court.**

11. Upon request, the Advisory Committee was provided with information on measures that had been taken to identify savings in budget implementation. It was indicated that, despite staff rules allowing for business class travel for trips exceeding nine hours, all staff of the Office of the Prosecutor had travelled in economy class since 2007. It was further indicated that during two recent contempt of court cases, the use of a videoconference link had allowed for the initial appearances, trial proceedings and delivery of judgments to be conducted simultaneously from The Hague, Freetown and Kigali, at a much lower cost than would have been required if the judges, legal staff and defendants had had to be flown from five locations to a single trial venue.

12. Upon further enquiry, the Advisory Committee was informed that following an internal restructuring of the Registry, the following sections had been merged since 2008: (a) outreach with public affairs; (b) court management with the communication and information technology service; (c) security and detention with the witness and victims unit; and (d) the Office of Administrative Support Services with the finance, budget, personnel, procurement and general services sections, to create the Administrative Secretariat. In addition to the reduction of the overall staffing level from 424 in 2008 to 90 in 2012, the Committee was informed that some head of section positions had been set at a post level that was lower than the level generally applied to equivalent functions at other international tribunals in order to reduce costs.

13. **The Advisory Committee commends the Court for its implementation of cost-saving measures in light of the prevailing budgetary constraints. The Committee urges the Registrar to continue to seek every opportunity for savings and efficiencies during the final phase of the Court's activities.**

IV. Progress to date

Completed trials

14. In paragraph 21 of his report (A/67/606), the Secretary-General indicates that the Court has made significant progress in achieving its mandate. He further indicates that three trials involving eight accused persons have been completed in Freetown: *Prosecutor v. Fofana and Kondewa* (the Civil Defence Forces case), *Prosecutor v. Sesay, Kallon and Gbao* (the Revolutionary United Front case) and *Prosecutor v. Brima, Kamara and Kanu* (the Armed Forces Revolutionary Council case), and that eight persons convicted by the Court are now in Rwanda serving sentences ranging from 15 to 52 years. According to the Secretary-General, the last major case before the Court is *Prosecutor v. Charles Ghankay Taylor*, now in its final phase.

Charles Taylor trial

15. It is indicated in paragraph 22 that the sentencing judgment was issued on 30 May 2012, according to which Mr. Taylor was sentenced to 50 years of imprisonment after being found individually criminally responsible for aiding and abetting and planning crimes contained in all 11 counts of the indictment. It is

further indicated that 49 grounds of appeal have been filed by both the defence and prosecution against the trial judgment and that the Appeals Chamber is expected to render its final judgment in September 2013.

16. The Advisory Committee recalls that the May 2011 completion strategy had projected the completion of all trials and appeals by May 2012 on the expectation that a judgment on the Taylor case would be delivered in September 2011, and an appeals judgment, if applicable, in May 2012. However, owing to unforeseen developments described in paragraphs 28 and 29 of the Secretary-General's report, the completion timeline is now projected for September 2013. Upon enquiry as to the feasibility of the timeline, the Advisory Committee was informed that the completion strategy took into account the length of the Taylor judgment, the amount of testimonial evidence potentially to be reviewed and the complexity of legal issues. It was also indicated by the Secretary-General that the Appeals Chamber had consistently met its projected completion dates in all prior cases.

17. **The Advisory Committee recognizes the complex and unpredictable nature of high-profile judicial proceedings such as the Taylor trial. The Committee also notes that 49 grounds of appeal have been filed by both parties. In that regard, the Committee trusts that sufficient consideration has been given to the above factors in the establishment of the new September 2013 completion timeline.**

Transition to the Residual Special Court for Sierra Leone

18. In paragraph 30 of his report, the Secretary-General outlines the ongoing arrangements in connection with the transition to the Residual Special Court for Sierra Leone, established in August 2010 and ratified by the Sierra Leone Parliament in December 2011, whose main purpose is to maintain and manage access to the archives; enforce sentences; and implement witness protection and support. He further indicates in paragraph 43 that the Residual Court will require $2 million for each year starting from the first year of its operations, without taking into account the additional cost of any ad hoc proceedings such as review proceedings, contempt proceedings and witness variation proceedings. The comments of the Advisory Committee on the financing arrangements for the Residual Court are contained in paragraph 22 below.

19. The Advisory Committee was informed that following the projected delivery of the Taylor appeal judgment in September 2013, the Court would begin its transition in October and November by implementing tasks such as finalization of archives and court records; finalization of financial reports; liquidation of assets; repatriation of non-essential staff; and conducting a final audit. The Committee was further informed that, in December 2013, the handover of the remainder of the Court premises and other assets to the Government of Sierra Leone would take place and the Residual Special Court would begin operations, followed by the transfer of paper and electronic records from the Office of the Registrar to the Residual Court. The Committee was informed that the headquarters agreement for the Residual Court had been signed by the Government of Sierra Leone and that the headquarters agreement for the interim seat of the Residual Court in The Hague was under consideration by the Government of the Netherlands.

20. **The Advisory Committee welcomes the progress made in the implementation of the Court's transition arrangements.**

V. Legacy activities and the liquidation of court assets

21. In paragraphs 46 to 49 of his report, the Secretary-General outlines the residual activities that will take place after the closure of the Special Court in September 2013. The activities include the establishment of a Peace Museum and a virtual tribunal that aims to make available in "real time" the video record of trials, trial transcripts and documentation, interviews and commentary. With regard to the liquidation of the Court's assets, the Secretary-General indicates in paragraph 50 that the Agreement on the Establishment of the Residual Special Court for Sierra Leone provides for a coordinated transition from the activities of the Court to the activities of the Residual Special Court. The Secretary-General also indicates in paragraph 53 that the liquidation of the Court's assets began in 2011 with, inter alia, the transfer of a building block to the Sierra Leone Law School and, in September 2012, the transfer of its former personnel building to the Sierra Leone police.

22. With regard to financing arrangements, the Advisory Committee recalls that, pursuant to article 3 of the Agreement on the Establishment of the Residual Special Court, the expenses of the Court are to be borne by voluntary contributions from the international community. The Committee is of the view that, in light of the increasingly competitive donor environment, the Residual Special Court may face fundraising challenges similar to those encountered by the Special Court (see para. 6 above). The Committee also notes that the Security Council has not agreed to the Secretary-General's intention to submit a proposal for alternative funding for the Residual Special Court (see S/2012/892). **In that regard, the Advisory Committee is concerned about the sustainability of voluntary contributions for the activities of the Residual Court and legacy activities. The Committee therefore recommends that the General Assembly request the Secretary-General to analyse the lessons learned and to examine alternatives such as, for example, the possibility of including the Residual Court in the financing arrangements for the International Residual Mechanism for Criminal Tribunals.**

VI. Recommendations

23. **The Advisory Committee notes that, since 2004, the Secretary-General has continued to request subventions from the regular budget to cover shortfalls in voluntary contributions (see annex II to the present report). In view of the importance of the activities undertaken by the Special Court for Sierra Leone, and bearing in mind the importance of the trial in progress, the Committee recommends that the Assembly approve, as an exceptional measure, a subvention of up to $14,000,000 for the period from 8 December 2012 to 31 December 2013 intended to supplement any voluntary contributions received so that the Court can complete its work. The Committee recommends that the Assembly:**

(a) **Authorize the Secretary-General to enter into commitments in an amount not to exceed $14,000,000 for the period from 8 December 2012 to 31 December 2013 for a subvention to the Special Court for Sierra Leone under the provisions of paragraph 11 of annex I to resolution 41/213 of 19 December 1986, under special political missions in section 3, Political affairs, of the programme budget for the biennium 2012-2013;**

(b) **Request the Secretary-General to report to the General Assembly at its sixty-eighth session on the implementation of the subvention during the biennium 2012-2013 and on the status of voluntary contributions for the Special Court.**

24. **The Advisory Committee stresses that its recommendation in the preceding paragraph is made on the basis that, in accordance with section XII, paragraph 6, of General Assembly resolution 65/259: (a) any regular budget funds appropriated for the Special Court will be refunded to the United Nations at the time of the liquidation of the Court, should sufficient voluntary contributions be received; and (b) the Secretariat, the Management Committee of the Special Court and the Registrar and other senior officials of the Court will intensify their efforts to fund the activities of the Court through voluntary contributions.**

Annex I

Fundraising meetings held by officials of the Special Court for Sierra Leone in 2012

January 2012

The Hague

1. Department of State of the United States of America, Ambassador-at-Large for Global Criminal Justice

Freetown

2. Government of Sierra Leone, Attorney-General and Deputy Attorney-General

February 2012

Dakar

3. Embassy of Sierra Leone to Senegal

April 2012

Brussels

4. African Working Party of the European Union
5. Permanent Representation of Sweden to the European Union
6. Permanent Representation of the United Kingdom of Great Britain and Northern Ireland to the European Union
7. Permanent Representation of Norway to the European Union
8. Permanent Representation of Hungary to the European Union
9. Permanent Representation of the Netherlands to the European Union
10. Permanent Representation of Finland to the European Union
11. European Commission
12. European External Action Service
13. Embassy of Sierra Leone to Belgium

The Hague

14. Ministry of Foreign Affairs of the Netherlands
15. Embassy of the United Kingdom to the Netherlands
16. Embassy of the United States to the Netherlands

May 2012

Freetown

17. Members of Parliament from Germany
18. Members of the Parliament of Finland
19. Embassy of the United States to Sierra Leone
20. Embassy of Germany to Sierra Leone
21. Embassy of the United Kingdom to Sierra Leone
22. Delegation of the European Union to Sierra Leone

June 2012

New York

23. Permanent Mission of Australia to the United Nations
24. Permanent Mission of Austria to the United Nations
25. Permanent Mission of Chile to the United Nations
26. Permanent Mission of Cyprus to the United Nations
27. Permanent Mission of Finland to the United Nations
28. Permanent Mission of Germany to the United Nations
29. Permanent Mission of Ireland to the United Nations
30. Permanent Mission of Israel to the United Nations
31. Permanent Mission of Liechtenstein to the United Nations
32. Permanent Mission of Luxembourg to the United Nations
33. Permanent Mission of the Netherlands to the United Nations
34. Permanent Mission of Nigeria to the United Nations
35. Permanent Mission of Norway to the United Nations
36. Permanent Mission of Saudi Arabia to the United Nations
37. Permanent Mission of South Africa to the United Nations
38. Permanent Mission of Spain to the United Nations
39. Permanent Mission of Sweden to the United Nations
40. Permanent Mission of the United Kingdom to the United Nations
41. United States Mission to the United Nations
42. African Union Group of Legal Advisers
43. European Union Group of Legal Advisers

Freetown

44. Chief Public Prosecutor of Norway
45. Embassy of the United States to Sierra Leone

July 2012

Washington, D.C.

46. United States Department of State, Ambassador-at-Large for Global Criminal Justice
47. United States Department of State, Principal Deputy Assistant Secretary for African Affairs
48. United States Department of State, Ambassador-at-Large for Global Women's Issues
49. United States Department of State, Director General of the Foreign Service and Director of Human Resources
50. United States Senate, Senator Patrick Leahy
51. United States Senate, Senator Bernie Sanders
52. United States House of Representatives, Representative Peter Welch
53. United States House of Representatives, Representative Chris Smith
54. United States House of Representatives, Representative James McGovern
55. United States House of Representatives, Representative Kay Granger
56. United States House of Representatives, Representative Jan Schakowsky
57. United States House of Representatives, Representative Nita Lowey
58. United States House of Representatives, Representative Ed Royce
59. United States House of Representatives, Representative James Clyburn

The Hague

60. Embassy of the United Kingdom to the Netherlands
61. Embassy of the United States to the Netherlands
62. Embassy of Canada to the Netherlands

September 2012

The Hague

63. Embassy of Austria to the Netherlands
64. Embassy of Canada to the Netherlands
65. Embassy of Belgium to the Netherlands
66. Embassy of Denmark to the Netherlands

67. Embassy of Finland to the Netherlands
68. Embassy of France to the Netherlands
69. Embassy of Germany to the Netherlands
70. Embassy of Guatemala to the Netherlands
71. Embassy of Ireland to the Netherlands
72. Embassy of Nigeria to the Netherlands
73. Ministry of Foreign Affairs of the Netherlands
74. Embassy of Norway to the Netherlands
75. Embassy of South Africa to the Netherlands
76. Embassy of Sweden to the Netherlands
77. Embassy of the United Kingdom to the Netherlands
78. Embassy of the United States to the Netherlands

October 2012

Brussels

79. Permanent Mission of the African Union in Brussels

New York

80. Permanent Mission of Chile to the United Nations
81. Permanent Mission of Denmark to the United Nations
82. Permanent Mission of Finland to the United Nations
83. Permanent Mission of Germany to the United Nations
84. Permanent Mission of Guatemala to the United Nations
85. Permanent Mission of Liberia to the United Nations
86. Permanent Mission of Norway to the United Nations
87. Permanent Mission of Sierra Leone to the United Nations
88. Permanent Mission of the Republic of Korea to the United Nations
89. Permanent Mission of Sweden to the United Nations
90. Permanent Mission of Turkey to the United Nations
91. Office of the Permanent Observer for the African Union to the United Nations
92. Delegation of the European Union to the United Nations
93. Office of the Permanent Observer for the Organization of Islamic Cooperation to the United Nations

Freetown

94. Joint Committee on Foreign Affairs and Trade, Ireland

November 2012

The Hague

95. Embassy of Kazakhstan to the Netherlands

96. Embassy of Kenya to the Netherlands

Annex II

Special Court for Sierra Leone: projected resource requirements for 2013

Estimated requirements by object of expenditure

(United States dollars)

Object of expenditure	*Appeal trial January-September 2013*	*Transition phase*			
		October 2013	*November 2013*	*December 2013*	*Total transition October-December 2013*
Posts (gross)	5 812 400	516 700	361 700	217 000	1 095 400
Temporary posts	489 000	43 500	30 500	18 300	92 300
Compensation to judges	1 066 600				–
Consultants and experts	90 500				–
Witness costs	36 500				–
Travel	276 100	15 300	7 700	3 900	26 900
Contractual services	729 600	40 500	20 300	10 200	71 000
General operating expenses	1 587 400	88 200	44 100	22 100	154 400
Hospitality and outreach	2 500				–
Supplies and materials	370 200	20 600	10 300	5 200	36 100
Acquisition of furniture and equipment	102 000				–
Tax liability	100 000	23 900			23 900
Contingency	533 100				–
Total	**11 195 900**	**748 700**	**474 600**	**276 700**	**1 500 000**

Summary of subvention request for 2012/2013

(United States dollars)

Subvention request for 2012 — appeals trial	921 156
Subvention request for January-September 2013 — appeals trial	11 195 900
Transition to Residual Court	1 500 000
Contempt proceedings	382 944
Total requirement for 2012/2013	**14 000 000**